



[9110-05-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA-2004-19515 and TSA-2009-0018]

RIN 1652-AA64

Air Cargo Screening Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of fees.

SUMMARY: This notice establishes user fees for certain security threat assessments (STAs) performed by the Transportation Security Administration (TSA). In the Air Cargo Screening final rule published on August 18, 2011, TSA proposed a fee range for security threat assessments of between \$31 and \$51 and sought comment on the fee range and on the methodology used to calculate the fee. The final rule stated that TSA would announce the final fee amount in a notice in the Federal Register. This notice establishes a fee of \$41 for certain security threat assessments in the air cargo program and responds to public comments made regarding the fee range.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Michael Gambone, Director of Revenue, TSA-14, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6014; telephone (571) 227- 2323; facsimile (571) 227-2904; e-mail tsa-fees@dhs.gov.

SUPPLEMENTARY INFORMATION:

Availability of Document

You can get an electronic copy using the Internet by--

- (1) Searching the electronic Federal Docket Management System (FDMS)

web page at <http://www.regulations.gov>;

- (2) Accessing the Government Printing Office's web page at

<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published Federal Register edition; or accessing the "Search the Federal Register by Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

- (3) Visiting TSA's Security Regulations web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the FOR FURTHER INFORMATION CONTACT section. Make sure to identify the docket number of this rulemaking.

Background

On May 26, 2006, TSA issued the Air Cargo Security Requirements final rule (2006 rulemaking),¹ which, in part, required certain cargo workers of aircraft operators, foreign air carriers, and indirect air carriers (IACs) to undergo an STA conducted by TSA. TSA checks a variety of government databases to verify the individual's identity and determine that he or she does not pose a security threat to transportation or national security. TSA is authorized to collect fees to offset the cost of conducting STAs.

¹ 71 FR 30478.

6 U.S.C. 469. The 2006 rulemaking established a fee for STAs of \$28, and incorporated the fee amount in the civil aviation security regulation. 49 CFR 1540.209.

On September 16, 2009, TSA published the Air Cargo Screening interim final rule (IFR) (2009 IFR),² which establishes requirements for certain additional individuals to obtain an STA. These individuals are certified cargo screening facilities (CCSF) employees and authorized representatives that screen cargo, and have unescorted access to screened cargo or carry out certain other cargo security duties.

The 2009 IFR amended § 1540.209 to remove the specific fee amount from the regulatory text. In the preamble to the 2009 IFR, we described how TSA would calculate the fee for STAs and stated that the fee would be between \$13 and \$21, depending on the size of the population and whether there are changes to the costs involved in the calculation. TSA explained that TSA would publish specific fee amounts and changes to fee amounts as a notice in the Federal Register.³ We invited comment on the new proposed fee, and the methodology and population estimates we used to arrive at the proposed fee. Since the issuance of the IFR, TSA has not charged a fee for STA processing, because the specific fee amount was removed from the regulatory text and was not published elsewhere.

TSA has further reviewed costs and population data since the IFR was issued. On August 18, 2011, TSA published the Air Cargo Screening final rule (2011 rule)⁴ that responded to comments received on the IFR. The 2011 rule also explained that due to

² 74 FR 47672.

³ 74 FR 47684.

⁴ 76 FR 51848. Section 1540.209 of the 2006 rulemaking stated that a fee of \$28 is required for TSA to conduct an STA. The 2009 IFR, however, revised § 1540.209 so that the regulation no longer contains a specific fee amount. Section 1540.209 now states that TSA will publish fee amounts and any revisions to the fee amounts as a notice in the Federal Register.

significant decreases in the population estimate, the fee necessary to recover TSA's costs of conducting threat assessments would increase. TSA proposed a new fee range between \$31 and \$51. We invited comment on the new proposed fee, and the methodology we used to arrive at the new proposed fee range. The 2011 rule stated that TSA would publish specific fee amounts and changes to fee amounts as a notice in the Federal Register.⁵

The 2011 rule also stated that the "Air Cargo Screening Security Threat Assessment Fee Development Report" (Fee Report) provided additional detailed information regarding the fee. However, TSA inadvertently omitted to place the report in the public docket. Accordingly, on August 25, 2011, TSA published a correction notice in the Federal Register (August 25 notice)⁶ explaining the omission and indicating that TSA placed the Fee Report in the public docket and reopened the comment period on the fee for an additional 30 days. TSA responds to comments submitted on the fee below.

Fee Amount

By this notice, TSA announces the final fee of \$41 for STAs for employees of aircraft operators, foreign air carriers, IACs, and CCSFs who have or are applying for unescorted access to cargo to be transported on passenger aircraft, screen cargo, supervise the screening of cargo, or perform certain other security functions as provided for in § 1540.201(a).

As TSA explained in the 2011 rule,⁷ changes in the population estimates necessitated that TSA propose an increase in the fee range to \$31 to \$51.⁸ In

⁵ 76 FR 51857.

⁶ 76 FR 53080.

⁷ 76 FR 51857.

summarizing the changes from the 2009 IFR to the 2011 rule, the five-year cost estimate for threat assessment services increased by approximately \$4.2 million, and the five-year population estimate decreased significantly by approximately 551,000. Because of the substantial decrease in population, there will be fewer applicants from which fixed costs of threat assessment services can be recovered, thereby increasing the per applicant fee. To recover the full cost of the STA services from the estimated population described in § 1540.201, TSA is announcing a fee of \$41.

Pursuant to the Chief Financial Officers Act of 1990 (Pub. L. 101-576, 104 Stat. 2838, Nov. 15, 1990), TSA is required to review fees no less than every two years. 31 U.S.C. 3512. Upon review, if TSA finds that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (that is, total fees do not cover the total costs to provide the services), TSA will adjust the fee accordingly.

Comments on the STA Fee Calculation and Other Issues Relating to STAs

TSA received comments from 13 commenters on the 2011 rule and the August 25 notice relating to the STA fee. These comments are addressed below.

STA Fees

Comment: Several commenters expressed the concern that the proposed fee range is excessive and too expensive for industry to bear, especially at this time of economic downturn. One commenter stated that the fee amount for the name checks component of the fee was disproportionate to the level of administrative costs the agency incurs by checking names against terrorists data bases. Additional commenters believed that an average annual personnel cost of \$134,000 is overstated.

⁸ In the 2009 IFR, the fee range was \$13 to \$21.

Another commenter maintained that the information technology platform/systems component of the fee was unnecessary, as this system has been in place since 2006, and the commenter believes that TSA should not charge for the development of a system already in place.

One commenter asserted that a search of the applicant's name through various databases is primarily conducted by electronic means, not requiring a large amount of personnel, and that other necessary functions for the STA are carried out by IACs/CCSFs' Security Coordinators, further reducing TSA's need for personnel in the STA process. A commenter suggested that if TSA would allow submission of names in batch format, versus one at a time, less staff would be needed for the name check.

TSA Response: While TSA recognizes the STA fee will impose a new financial burden on the industry during a period of economic stress, TSA is required by statute to collect fees to recover all costs of conducting vetting and credentialing services. 6 U.S.C. 469. As part of this Congressional mandate, TSA works within Federal guidelines to ensure the most efficient use of resources to minimize the cost of vetting services. The STA fee is set to recover only the cost of vetting services being provided to STA applicants, and better aligns cost recovery from those that directly benefit from this unique security service. Further, TSA conducts regular reviews to ensure that fees are set to recover the full cost of vetting services.

TSA used actual cost data from 2009 to determine that the average annual fully burdened⁹ cost of personnel necessary for this vetting service was \$134,000. TSA used

⁹ The fully burdened employee cost is comprised of salary and benefits that include such items as the Government's contributions to an employee's health insurance, life insurance, and retirement.

this actual figure to estimate future personnel costs accurately over the five-year period of the cost model.

While TSA can accomplish a portion of the vetting process using information technology, there is a substantial need for human resources to ensure timely, complete, and accurate vetting results. On average, TSA expects to process over 300 applicants each and every calendar day over the next five years. Such volume necessitates that various personnel carry out the multitude of threat assessment functions during the vetting process.

- Vetting Managers—establish, implement, operate, and monitor best practices necessary for efficient threat assessments.
- Vetting Analysts—provide a wide range of communications, operations, and administrative activities, including written correspondence, budgetary formulation and execution, programmatic standards and procedures.
- Transportation Security Specialists—provide analysis of vetting results and remediation of incomplete data or incorrect data.
- Technology Specialists—manage data ingest, processing, and reporting for the STA process. Duties include program architecture, requirements development and implementation, data information assurances and procedures, and completion of risk and vulnerability assessments.
- Business Management Specialists—manage administrative services that include budget formulation/execution, human resource management, training, and day-to-day office needs.

TSA estimates that personnel costs will average approximately \$2.6 million in each of the first five years of the program. Over that same period, TSA estimates that over 130,000 individuals will apply for STA services annually. Accordingly, TSA will need to recover approximately \$20 from each applicant to recover personnel costs fully.

A robust technical platform ensures accurate and efficient threat assessment services. While TSA will capitalize on infrastructure investments already made to implement prior STA services, new technology investments are necessary to modify existing capacity and to develop further capabilities. For example, the technology platform needs to be enhanced to integrate an STA with a five-year duration and to provide sustained operational redundancy.

With regard to the comment that TSA should allow submission of names in batch, the current system will only allow submission of information for one individual at a time.

Comment: One association feared that a large percentage of their freight forwarders that are small businesses would pass the cost to their shipper clients, thereby increasing the cost of transportation. Another commenter complained that STA fees are particularly burdensome to the trucking industry that CCSP participants rely on to transport their cargo. According to this commenter, given the high employee turnover that trucking companies often experience, high STA fees may cause truck drivers transporting cargo to opt out of the business thereby reducing competition.

One commenter was concerned that they not only have to submit and pay STAs for their direct employees but also for those of any of their authorized agents. This commenter suggested TSA should allow an authorized agent to submit and pay for their

own STAs, and that TSA should regulate all non-IAC entities, such as haulers and ground handling agents, so that they can share in the costs of securing transportation.

TSA Response: TSA agrees that some entities may pass on the costs of STA fees to their customers. However, since the STA requirement applies to all populations included in this fee calculation, TSA believes small businesses will not be put at a competitive disadvantage. For more information, see Appendix A (page 153), Economic Impacts on Existing CCSFs by Size, in the Regulatory Evaluation accompanying the 2011 rule.

TSA believes STA fees will not be overly burdensome to the trucking industry. The STA requirement does not produce a competitive advantage for any specific firm because the STA requirement applies to all trucking entities carrying screened cargo for CCSFs. TSA does not prescribe how companies must finance STA costs. A firm may decide to pay for the STAs, charge employees, or pass on the costs to the CCSFs. In addition, an STA is valid for five years regardless of place of employment, so drivers will not have to undergo an additional STA until their current STA expires.

TSA is currently developing enhancements to the existing Indirect Air Carrier Management System (IACMS) that will enable the authorized agent to process and pay for their own STAs. At this time, TSA has no plans to expand the scope of the regulations to include other entities beyond the air carriers, IACs, and CCSFs.

Comment: An association commented that the cost of the STA fee is high because the current STA system is highly flawed and redundant. For example, IACs provide TSA names for STAs, many of which have been supplied several times over by other IACs. This association recommends that TSA build a “hosting portal” through

which IACs can access a database to determine whether an additional filing by a particular IAC is needed.

TSA Response: The existing TSA portal for validating an STA enables any regulated party with access to the IACMS to view and validate a current STA in their profile without the need to resubmit payment and process a new STA. Thus, TSA does not require that an individual obtain more than one STA. Rather, the decision of whether to require an individual to obtain more than one STA is a business decision made by regulated parties.

Comments: Several commenters believe that TSA grossly underestimated the population of those subject to STAs by limiting the population to IACs and certified cargo screening program (CCSP) participants. These commenters indicated that TSA must include all entities that are subject to STA requirements, not merely those in the CCSP. These commenters stated that other components of the aviation and cargo industry, such as employees of full all-cargo carriers, passenger air carriers, airports, and trucking companies, requiring STAs should be included in this fee calculation. According to these commenters, TSA would be able to leverage existing technology and infrastructure and thereby process fees at lower costs.

One commenter was concerned that TSA did not include direct air carrier employees subject to the STA requirements, but who receive them at no extra cost, as part of the requirement to obtain Security Identification Display Area (SIDA) IDs.

Another commenter requested that if TSA intends to limit the population to IACs and other CCSP participants, then TSA should clearly limit applicability of the proposed fees to those persons engaged in the CCSP. Another commenter submitted that even

within the IAC and CCSP groups, the fee report estimates of 1,000 STAs that would be needed for “super”¹⁰ shippers was too low.

TSA Response: TSA appreciates the questions regarding which populations are included in the STA fee, and provides clarification of TSA’s population estimates below. In the 2011 rule, TSA combined populations from the 2006 rule including personnel of aircraft operators, foreign air carriers, and IACs with unescorted access to cargo, with the CCSF population. To estimate the size of the “IAC” population for the 2011 rule, TSA used the actual historical number of STA enrollments of aircraft operator, foreign air carrier, and IAC personnel. Thus, the population estimate in the 2011 rule properly considers not only IAC personnel, but also personnel of aircraft operators handling cargo off airport, all-cargo operators, foreign air carriers, and CCSFs.¹¹ Therefore, since the STA fee takes into account all the population segments noted above, it is not limited to IACs and CCSFs.

The cost and population estimates for airport personnel required to obtain SIDA IDs were not included in the fee models for this rulemaking because STAs for holders of SIDA IDs require different processes within TSA and it would not be appropriate to include these STA holders in the population estimates for determining the STA fee. TSA may address this population in a future rulemaking.

CCSF STA projections in the 2011 rule, including those for “super” shippers, were based on expected firm enrollment into the CCSP. The 1,000 STAs per super

¹⁰ For further information on the categorization of shippers, refer to the Fee Report. In the Fee Report on page 13, TSA describes the categorization of shippers as small, medium, large, and super.

¹¹ While the 2011 rule and the Fee Report used the terms “IACs” and “CCSFs” to describe the populations used to determine the fee, TSA has verified that the actual populations used to calculate the fee include personnel of aircraft operators, foreign air carriers, and all-cargo operators, as well as CCSFs. TSA also notes that the Regulatory Evaluation only considers the STA costs imposed by the 2009 IFR and 2011 rule, and thus only addresses the costs of an STA for CCSFs.

shipper was TSA's best estimate at the time the 2011 rule was completed. This estimate is an average, with some super shippers requiring more and some requiring fewer STAs.

Comment: One commenter stated that it did not make sense that a decrease in the population results in an increase in the STA fee.

TSA Response: The STA fee is set to recover fully the cost of the services provided to STA applicants. As such, the fee reflects both the service costs and the number of beneficiaries receiving services. It is important to note that a large portion of the estimated service costs are fixed and do not vary based on the number of estimated applicants. In addition, there are half as many applicants in the 2011 rule from which the sustained service costs must be recovered. This, in turn, caused the fee per person to increase.

Comment: A number of commenters stated that it is incorrect for TSA to assume that the private sector should bear 100 percent of all costs related to the STA process. According to such commenters, security is an inherently governmental function, and it is reasonable to assume that public funds should cover at least some portion of the STA costs. Another commenter argued that the private sector is already bearing a significant portion of the costs of the STA by managing the process to provide and update information on its employees.

TSA Response: TSA is required to collect fees to offset all costs of providing credentialing and background investigations in accordance with 6 U.S.C 469. As part of this mandate, TSA will work within Federal guidelines to ensure the most efficient use of resources to minimize the cost of vetting services. Further, TSA is mandated by statute

to review fees no less than every two years to ensure that fees are set to recover the full cost of vetting services. If the fees are too high or too low, TSA will adjust the fee.

Comment: One commenter alleges that TSA has violated the terms of Executive Order 13563 (EO 13563) because the Regulatory Evaluation for the 2011 rule does not separately address the costs and benefits of the STA fee. This same commenter argues that TSA never considered alternative methods of conducting STAs, as required by EO 13563, including the use of outside contractors that might perform the required checks for substantially less.

TSA Response: TSA does not agree that it violated the terms of EO 13563. The STA fee is an integral part of the implementation of the 2011 rule as it provides the funding to offset the costs of vetting services being provided to STA applicants. As we have previously discussed, TSA is required to recover all costs of conducting vetting and credentialing services by 6 U.S.C. 469. Consequently, the benefits of the fee include providing the full funding TSA needs to operate the program and allowing TSA to comply with the requirement to recover all costs of providing this unique service. TSA's Regulatory Evaluation included an analysis of alternatives to achieving 100 percent screening of cargo transported on passenger aircraft; TSA compared the alternative of 100 percent screening solely by air carriers to the alternative of screening by participants of the CCSP program as well as air carriers, as established in the 2009 IFR. Both alternatives encompass a requirement that personnel with unescorted access to cargo successfully complete an STA conducted by TSA.

Finally, only the Federal Government can access the consolidated Terrorist Screening Database (TSDB), and must first enter into a Memorandum of Understanding

with the Federal Bureau of Investigation (FBI) with very specific access privileges and justifications. Private entities such as outside contractors are not provided access.

Checking applicants against the TSDB is a central feature of the STA that TSA conducts.

Comment: Some commenters submitted that TSA should not base such fees on inexact estimates of the actual costs or the number of STAs that will be required, and should hold the STA fee in abeyance until TSA has further dialogue with industry. Other commenters recommended that TSA wait to charge an STA fee until issuance of the Standardized Vetting, Adjudication, and Redress rule that TSA is developing.

TSA Response: Under 6 U.S.C. 469, TSA is currently required to fund vetting and credentialing programs through user fees. The STA fee is an important part of TSA's compliance with this Congressional mandate. Moreover, TSA does have sufficient information to make a reasonable estimate and has shared that information in the 2011 rule. For these reasons, TSA concludes that it would be inappropriate to delay implementation of the STA fee.

With regard to the Standardized Vetting, Adjudication, and Redress Services rulemaking to which the commenter refers, TSA notes that this initiative is still in the developmental stages, and is not, therefore, a reasonable basis for delaying any part of this rulemaking.

Finally, in addition to the extensive dialogue and industry outreach that TSA conducted in the development of air cargo security policy, industry has had the opportunity to comment on this STA fee through notice-and-comment rulemaking.

Other STA Issues

Comment: A commenter stated that their organization conducts Criminal History Background Checks on all prospective employees, and that although these checks are not fingerprint-based checks, they are exhaustive. Accordingly, to avoid duplication of time, effort, and cost, the commenter requested that TSA accept such background checks in lieu of STAs.

TSA Response: TSA does not believe that the name-based criminal check that the commenter's organization conducts is comparable to the STA TSA conducts on this population and is not sufficient to provide the necessary level of security needed in this industry. The STA TSA conducts includes matching names against the consolidated TSDB and other Government data sources, to which private entities do not have access. These databases contain information relating to terrorist activity, most of which is not criminal history information.

Comment: One commenter stated that the TSA criminal history records check (CHRC) provides a greater degree of security than the STA requirements, and that to bring congruency among the STA requirements, TSA ought to require CHRCs immediately for workers with unescorted access to cargo.

TSA Response: As TSA stated in the response to comments in the 2011 rule,¹² TSA agrees that CHRCs add a level of security to the name-based STA requirement. TSA intends to address the CHRC requirement in the broader context of all TSA programs.

Comment: One commenter appreciated TSA's recognition that the STAs performed under the SIDA, Commercial Driver's License-Hazardous Material

¹² 76 FR 51854.

Endorsement, Transportation Workers Identification Card, and Free and Secure Trade programs have been deemed comparable to STAs performed under the CCSP. This commenter states that it is not clear whether a CCSP facility operator is relieved of the burden to submit personal identifying information for each individual who has been vetted under these comparable programs, because the CCSP is designed on a facility-specific basis rather than an individual enrollment basis. This commenter believes that TSA should be moving toward a common program platform for security vetting programs and should grant full reciprocity to individuals who have been vetted against the TSDB, no matter what program the STA was first required under.

TSA Response: When an individual asserts that he or she has successfully completed an STA comparable to the STA required under the 2011 rule, TSA requires that the individual present the credential that corresponds to the comparable STA to the operator so that the operator may retain a copy, and that the individual notify the operator when the credential expires. 49 CFR 1540.203(i)(1) and (2). TSA does not require the submission of personal identifying information to TSA for an individual who has been vetted under a comparable STA.

As we understand this comment, the commenter suggests that TSA should implement a system for conducting and administering STAs that is focused on the individual rather than the employer for which, or the facility in which, he or she currently works. TSA may consider such a process in a future rulemaking.

Issued in Arlington, Virginia, on May 17, 2012.

/s/

John S. Pistole,
Administrator.

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